

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)	MDL NO. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	CIVIL ACTION NO. 01-12257-PBS
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THIS DOCUMENT RELATES TO)	Judge Patti B. Saris
ALL ACTIONS)	
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NEW ENGLAND CARPENTERS HEALTH)	CIVIL ACTION NO. 05-11148-PBS
BENEFIT FUND, et al.,)	
Plaintiffs,)	Judge Patti B. Saris
v.)	
FIRST DATABANK, INC., and McKESSON)	
CORPORATION,)	
Defendants.)	
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MOTION FOR MODIFICATION OF THE PROTECTIVE ORDER

This motion is brought jointly by three plaintiffs who are parties to both Civil Action No. 01-CV-12257 (the “AWP MDL”) and Civil Action No. 05-11148 (the “Related Action”) — Pirelli Armstrong Tire Corporation Retiree Medical Benefits Trust, Teamsters Health & Welfare Fund of Philadelphia and Vicinity, and Philadelphia Federation of Teachers Health and Welfare Fund (the “Related Action Plaintiffs”) — and by McKesson Corporation, which is a defendant in the Related Action only. The Related Action Plaintiffs file this motion concurrently in both of the above-captioned cases. McKesson is moving in the Related Action only, since it is not a party to the MDL proceeding.

By this motion, The Related Action Plaintiffs and McKesson seek a modification to the Protective Order in the AWP MDL (the “AWP Protective Order”) to provide that information

produced or exchanged in the AWP MDL Litigation, which is discoverable in the “Related Action,” may be provided to and used by the parties in the Related Action subject to the AWP Protective Order, as modified by the Proposed Order filed concurrently with this motion. (See (Proposed) Order, filed herewith, setting forth modifications to AWP MDL Protective Order ¶¶ 4, 6, and 8.)

ARGUMENT

The AWP MDL includes actions filed in 2002 on behalf of various private parties and state agencies and later transferred to this Court. The Related Action was filed in this district on June 2, 2005, and reassigned by the clerk’s office to this Court as an action related to the AWP MDL. The Related Action Plaintiffs, who are also plaintiffs in the MDL, act as third party payors for prescription drugs and other health benefits.¹ The Related Action names two defendants, McKesson and First Databank, Inc., neither of which is a party to the AWP MDL.

Over the course of the AWP MDL, an extensive discovery record has been created, which addresses some matters that will be at issue in the Related Action.² A significant portion of that discovery has been produced subject to the AWP Protective Order, which limits its use “solely for the purpose of the AWP Litigation” (AWP Protective Order ¶ 8). To the extent some of the record developed in the AWP MDL is discoverable in the Related Action, the parties to the Related Action would have to recreate that record from scratch, thereby multiplying discovery proceedings substantially. For instance, parties and third parties who have already provided discovery in the AWP MDL would be subject to duplicative discovery in the Related

¹ The fourth named plaintiff in the Related Action, New England Carpenters Health Benefits Fund, is not a party to the AWP MDL.

² The reassignment of the Related Action to this Court confirms as much. See Combined Local Rules, rule 40.1(G)(1) (providing for designation as a related case where the second action involves “the same or similar claims or defenses” or “substantially the same questions of fact and law”).

Action. Extending the AWP MDL Protective Order to the parties in the Related Action, and permitting use in the Related Action of portions of the AWP MDL discovery record thus presents obvious efficiencies. The Court itself raised the possibility of modifying the AWP Protective Order to permit such access and use at the February 9th status conference. (*See Civil Action No. 05-11148, Docket No. 44, Reporter's Transcript, Status Conference Hearing dated February 9, 2006 at 16:3-10 attached as Exhibit A.*)

The modification to the AWP Protective Order sought by this motion would not prejudice the confidentiality interests of the other parties to the AWP MDL. The Related Action Plaintiffs and their lawyers already have access to all discovery produced pursuant to the AWP Protective Order by virtue of their status as named plaintiffs or counsel of record in the AWP MDL. The modification sought by this motion would enlarge the scope of the AWP Protective Order to add only three additional parties — plaintiff New England Carpenters Health Benefits Fund and defendants McKesson and First Databank. Importantly, any use of confidential discovery material produced in the AWP MDL, including material designated “highly confidential” or “attorney eyes only,” would continue to be governed by the terms of the existing AWP Protective Order, thereby retaining the protections on confidentiality originally contemplated by the parties to the AWP MDL and ordered by this Court.

CONCLUSION

For the foregoing reasons, the parties respectfully request this Court to grant the Related Action Plaintiffs and McKesson’s motion to modify the AWP Protective Order and issue an order in the form attached hereto as Exhibit B.

Dated: March 23, 2006

Respectfully submitted,

PIRELLI ARMSTRONG TIRE
CORPORATION RETIREE MEDICAL
TRUST, TEAMSTERS HEALTH &

WELFARE FUND OF PHILADELPHIA,
and PHILADELPHIA FEDERATION OF
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served upon the attorney of record for each other party through the Court's electronic filing service on March 23, 2006.

/s/ Steve W. Berman